

**SUPREME COURT MINUTES
THURSDAY, MARCH 11, 2004
SAN FRANCISCO, CALIFORNIA**

The Supreme Court of California reconvened in the courtroom of the Earl Warren Building, 350 McAllister Street, Fourth Floor, San Francisco, California, on March 11, 2004, at 9:00 a.m.

Present: Chief Justice Ronald M. George, presiding, and Associate Justices Kennard, Baxter, Werdegarr, Chin, Brown, and Moreno.

Officers present: Frederick K. Ohlrich, Clerk; and Gail Gray, Deputy Clerk.

- S104851 Joshua Lee Haynes, Plaintiff and Appellant
 v.
 Farmers Insurance Exchange, Defendant and Respondent
 Cause called. Daniel J. Gonzalez argued for Respondent.
 Jean Ballantine opened argued for Appellant.
 Sharon J. Arkin, appearing for Amicus Curiae Consumer Attorneys
 of California, continued argument for Appellant.
 Mr. Gonzalez replied.
 Cause submitted.
- S115377 The People, Plaintiff and Respondent
 v.
 Michael Frederick Britt, Defendant and Appellant
 Cause called. William Arzbaeher III argued for Appellant.
 Raymond L. Brosterhous, Deputy Attorney General, argued for
 Respondent.
 Mr. Arzbaeher replied.
 Cause submitted.

Justice Baxter, not participating in consideration of the following case, did not take the bench.

The Honorable Mark B. Simons, Associate Justice, Court of Appeal, First District, Division Five, sitting on the following case under assignment by the Chairperson of the Judicial Council, joined the Court at the bench.

S114171 State of California, Petitioner

v.

Kings County Superior Court, Respondent

Bernard Bodde, Real Party in Interest

Cause called. David A. Carrasco, Deputy Attorney General, argued for Petitioners.

Kim Scovis argued for Real Party in Interest.

Mr. Carrasco replied.

Cause submitted.

Court adjourned.

S122865

LEWIS v. ALFARO

Order to show cause issued

Respondent is ordered to show cause before this court, when the matter is called at the late May 2004 or June 2004 calendar, why a writ of mandate should not issue, directing respondent to apply and abide by the provisions of Family Code sections 300, 301, 308.5, and 355 in the absence of a judicial determination that these statutory provisions are unconstitutional. Pending this court's determination of this matter or further order of this court, respondent is directed to enforce and apply the provisions of Family Code sections 300, 301, 308.5, and 355 without regard to respondent's personal view of the constitutionality of such provisions, and to refrain from issuing marriage licenses or certificates not authorized by such provisions. In addition, pending this court's determination of this matter or further order of this court, all proceedings in *Proposition 22 Legal Defense and Education Fund v. City and County of San Francisco et al.* (San Francisco Super. Ct. No. CPF-04-503943) and *Thomasson et al. v. Newsom et al.* (San Francisco Super. Ct. No. CGC-04-428794) are stayed. This stay does not preclude the filing of a separate action in superior court raising a substantive constitutional challenge to the current marriage statutes.

The return in this matter, limited to the legal question whether respondent is exceeding or acting outside the scope of her authority in refusing to enforce the provisions of Family Code sections 300, 301, 308.5, and 355 in the absence of a judicial determination that such provisions are unconstitutional, is to be filed by respondent in the San Francisco Office of the Supreme Court on or before Thursday, March 18, 2004. In addressing the foregoing issue, the return should discuss not only the applicability and effect of article III, section 3.5 of the California Constitution, but any other constitutional or statutory provision or doctrine

that may be relevant to the resolution of the foregoing issue.

A reply may be filed by petitioners in the San Francisco Office of the Supreme Court on or before Thursday, March 25, 2004.

Any application to file an amicus curiae brief, accompanied by the proposed brief, may be filed in the San Francisco Office of the Supreme Court on or before Thursday, March 25, 2004.

Any reply to an amicus curiae brief may be filed in the San Francisco Office of the Supreme Court on or before Monday, March 29, 2004.

Votes: George, C.J., Kennard, Baxter, Werdegar, Chin, Brown and Moreno, JJ.

S122923

LOCKYER v. CITY OF SAN FRANCISCO

Order to show cause issued

Respondents are ordered to show cause before this court, when the matter is called at the late May 2004 or June 2004 calendar, why a writ of mandate should not issue, directing respondents to apply and abide by the provisions of Family Code sections 300, 301, 308.5, and 355 in the absence of a judicial determination that these statutory provisions are unconstitutional. Pending this court's determination of this matter or further order of this court, respondents are directed to enforce and apply the provisions of Family Code sections 300, 301, 308.5, and 355 without regard to respondents' personal view of the constitutionality of such provisions, and to refrain from issuing marriage licenses or certificates not authorized by such provisions. In addition, pending this court's determination of this matter or further order of this court, all proceedings in *Proposition 22 Legal Defense and Education Fund v. City and County of San Francisco et al.* (San Francisco Super. Ct. No. CPF-04-503943) and *Thomasson et al. v. Newsom et al.* (San Francisco Super. Ct. No. CGC-04-428794) are stayed. This stay does not

preclude the filing of a separate action in superior court raising a substantive constitutional challenge to the current marriage statutes.

The return in this matter, limited to the legal question whether respondents are exceeding or acting outside the scope of their authority in refusing to enforce the provisions of Family Code sections 300, 301, 308.5, and 355 in the absence of a judicial determination that such provisions are unconstitutional, is to be filed by respondents in the San Francisco Office of the Supreme Court on or before Thursday, March 18, 2004. In addressing the foregoing issue, the return should discuss not only the applicability and effect of article III, section 3.5 of the California Constitution, but any other constitutional or statutory provision or doctrine that may be relevant to the resolution of the foregoing issue.

A reply may be filed by petitioners in the San Francisco Office of the Supreme Court on or before Thursday, March 25, 2004.

Any application to file an amicus curiae brief, accompanied by the proposed brief, may be filed in the San Francisco Office of the Supreme Court on or before Thursday, March 25, 2004.

Any reply to an amicus curiae brief may be filed in the San Francisco Office of the Supreme Court on or before Monday, March 29, 2004.

Votes: George, C.J., Kennard, Baxter, Werdegarr, Chin, Brown and Moreno, JJ.

S057321

PEOPLE v. LOMAX (DARREL L.)
Extension of time granted

to May 14, 2004 to file appellant's opening brief.

S076582

PEOPLE v. BLACKSHER (ERVEN R.)
Extension of time granted

to May 10, 2004 to file appellant's opening brief.

S119975

D037485 Fourth Appellate District,
Division One

PEOPLE v. ATHAR
Extension of time granted

to April 9, 2004 to file appellant's opening Brief
on the Merits. No further extensions are
contemplated.